When I was first given the opportunity to take a leadership position with the American Bar Association Business Law Section Cyberspace Law Committee (CLC), my immediate reaction was not one of acceptance. As anyone who has tried to lead a particularly large volunteer group knows, there are many reasons to thank the inviter for the opportunity and politely decline. For starters, one anticipates a heavy workload, usually undertaken around one’s regular job as well as one’s private life; uncertainty as to how to deal with the norms and rules of the organization; and questions about whether one can carry forward the group’s history while allowing it to grow into new areas.

But in this case, the uncertainty was furthered with doubt about the underlying reason for the Committee in the first place. After all, by the late 2000s, the Internet revolution had come, burst, and seemingly settled into a routine, particularly in the field of Internet law. The questions my colleagues and friends had struggled with for the prior decade—the validity of electronic contracting, the regulation of privacy for children, the application of laws to those who tried to exploit the holes in computer security, and the endless battles over domain names—all seemed to have been largely settled by the Internet law pioneers. I wondered if all that was left was the mopping up duty.

And that word we used to describe ourselves—cyberspace! How quaint it seemed, a product of a science fiction author describing an arena of electronic virtual worlds. The word seemed to be stuck in a decade past, and I wondered if we should jettison it in favor of a modern word befitting the new century.

Except it seemed like every time I wanted to turn away from cyberspace law, some new twist came along to keep it interesting. The “personal website”
was quickly gravitating toward early forms of social media (well before anybody had coined the term to describe Friendster, MySpace, Facebook, or Twitter). The copyright wars never really stopped, and there were signs the content distributors were finding their battles to be harder than initially anticipated even as new content distributors such as film and TV leapt into the fray. The rest of the world was waking up to the Internet (and in later years used it to organize revolutions), but the rest of the world did not necessarily wish to follow the USA-driven (and -managed) model of the Net. And our early attempts to define privacy regulation were quickly proving to be overwhelmed by the advances in ways to learn about people and to use that information for purposes not necessarily in the interest of the subjects.

As I considered these changes, I looked around me at the group I was immersed in, a committee of lawyers who had continuously advanced the scholarship of cyberlaw as the rest of the bar remained hungry for analysis of how to apply the law in an increasingly complex system they were often unfamiliar with. More often than not, as soon as we had finished our work on a problem, at least some of us came up for air and asked how we could start a new project. We never lacked for new blood even as we enjoyed our work with our long-time friends.

Knowing that such good people were unlikely to disappear en masse, and eventually figuring that Internet law had not really gelled for all time, I accepted the invitation to chair the CLC.

So, when I was chairing my first of our annual standalone meetings as a Committee, the aptly named Winter Working Meeting (where we did little else but gather in rooms for hours on end of good conversation as we completed much of the Committee’s work or planned for the coming year), I was not surprised to be presented with a number of ideas from members who wanted to start new projects, some of them short-term like a program or an article to create in the coming weeks, others long-term concerns like books. Many of those projects later became work products of the Committee.

And then there was the discussion about Radio Frequency Identification Devices (RFID).

Here was something truly new that implicated many of our long-standing concerns and added new ones to the mix. Privacy, contracting, data security, international differences, government-driven development, regulation,
and legislative policy-setting all were obvious points to discuss when it came to this technology. And that didn’t include the basic issue of how lawyers could understand and explain the technology and its applications to others.

Prospective project leaders Ben Beard, Steve Middlebrook, and especially Sarah Jane Hughes, clearly had the light in their eyes as they approached and discussed the concept that had come together while they were working in Santa Clara, that year’s site for the meeting. We even dreamt of a tour of state legislatures once the book came out. There was no hesitation. The project was green-lighted immediately.

As often happens with difficult projects that require participation of many people, the execution can take longer than one would wish. Fortunately in this case, the time did not dampen the need or the enthusiasm of the project leaders, as RFID technology has only grown in use and concern in the ensuing years.

And now we come to today. The book in your hands is the product of a group of editors and authors who have sweated over many drafts, telephone calls, and research jaunts. To them all credit is due, and this work will surely be enduring and influential in the coming debates over the law and policy of RFID.

But, for me, it offers one other reward. Even after my chair has passed on to my successor, the proof of why the effort to maintain our Committee as a going concern continues to flow through means such as this book. The worries of whether our CLC remained relevant, my concerns of whether the law of technology would stagnate, the worries that our efforts to explain the intersection of law and technology were no longer needed, were far from justified. Books like this one are still needed, and more will be needed tomorrow.

So, I thank all of the members of CLC for their support of this effort and the many others that, through our CLC, have enhanced the scholarship and practice of cyberspace law—a name I still proudly use to describe our efforts and group.

Michael Fleming
Past-Chair, ABA Business Law Section Cyberspace Law Committee (2008–2011)